IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1241 of 2000

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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UNITED INDIA INSURANCE CO LTD

Versus

BIPINKUMAR KALIDAS MUJPURA

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Appearance:

MR PV NANAVATI for Petitioner

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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 17/08/2000

ORAL JUDGEMENT

1. This is an appeal under section 110-D of the Motor Vehicles Act, 1939, read with sections 173, 214 and 217 of the Motor Vehicles Act, 1988, at the instance of the insurer. It is pertinent to note at this stage that the insurer Insurance Company is the sole appellant in the present appeal. It is also pertinent to note that the Insurance Company had not obtained permission in writing of the Motor Accident Claims Tribunal to take up

defences available to the owner or driver, under section 110-C (2-A) of the said Act.

2. The contention sought to be raised in the present appeal on behalf of the appellant Insurer is a purely legal and technical contention. The accident is not disputed, neither is the liability of the insurer disputed. The only dispute raised on behalf of the appellant insurer is as regards the limit of liability. It is contended that under section 95(2)(b)(ii), the limit of liability is set at Rs.15000/- for each individual passenger, and that the Tribunal has erred in passing an award in excess of this statutory limit.

3. To my mind, this contention would not arise for consideration, looking to the facts of the case.

4. The controversy before the Tribunal was whether the injured claimant was a passenger, or a pedestrian, and therefore a third party. The Tribunal found, on the appreciation of the evidence on record, that he was not a passenger in the rickshaw and that he was a pedestrian. Since he was a pedestrian, the claim made by him would be a claim made by a third party. It is obvious that a claim made by a third party would not be limited by the limitations imposed by section 95(2)(b)(ii) of the said Act, since the latter limitation applies only to a passenger.

5. Thus, we are back to the basic controversy as to whether the sole appellant insurer can in the present appeal, take up a contention on a question of fact, and dispute on merits the findings of fact recorded by the Tribunal, as to whether the claimant was a pedestrian or a passenger.

6. To my mind this dispute, and the resolution of this dispute, is entirely on the merits of the case, and is outside the scope of statutory defence available to an insurer, unless permission in writing has been obtained from the Tribunal under section 110-C (2-A). As aforesaid, such permission has not been obtained.

7. Thus, in my opinion, the contention that the claimant was not a pedestrian and in fact was a passenger is a contention on the merits of the case, and is not a statutory defence which is otherwise available to an insurer.

8. In the premises aforesaid, I find that the present appeal is not maintainable on the contentions

raised. This appeal is, therefore, summarily dismissed.

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